

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



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DEPARTMENT OF INSURANCE
SPRINGFIELD

IN THE MATTER OF THE REVOCATION
OF THE LICENSING AUTHORITY OF:

HEARING NO. 4115

DAVID B. HELD
2584 Paradise Road
Matton, Illinois 61938

ORDER

I, Deirdre K. Manna, Acting Illinois Director of Insurance, hereby certify that I have read the entire Record in this matter and the hereto attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Eve Blackwell-Lewis, heretofore appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the entire Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, which are attached hereto and hereby made a part hereof.

I, Deirdre K. Manna, Acting Director of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact and Conclusions of Law # 1, # 2 and # 3 of the Hearing Officer, but hereby expressly reject Conclusion of Law # 4 and all of the Recommendations of the Hearing Officer. I hereby conclude that Respondent Held's actions in violating a Stipulation and Consent Order, previously entered into with the Department and in which the Department refrained from revoking the Respondent's producer's license for serious violations of the Illinois Insurance Code, is adequate and sufficient grounds for the revocation of Held's license pursuant to Section 500-70(a)(2) of the Illinois Insurance Code (215 ILCS 5/500-70(a)(2)). I therefore hereby enter the following Order under authority granted to me by Article XXIV and Article XXXI of the Illinois Insurance Code (215 ILCS 5/401 et. seq. and 5/500-5 et. seq.).

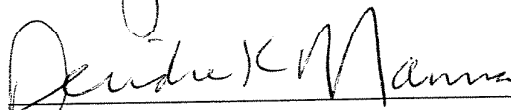
This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et. seq.). Further, this Order is appealable pursuant to the Illinois Administrative Review Law (735 ILCS 5/3-101 et. seq.).

NOW IT IS THEREFORE ORDERED THAT:

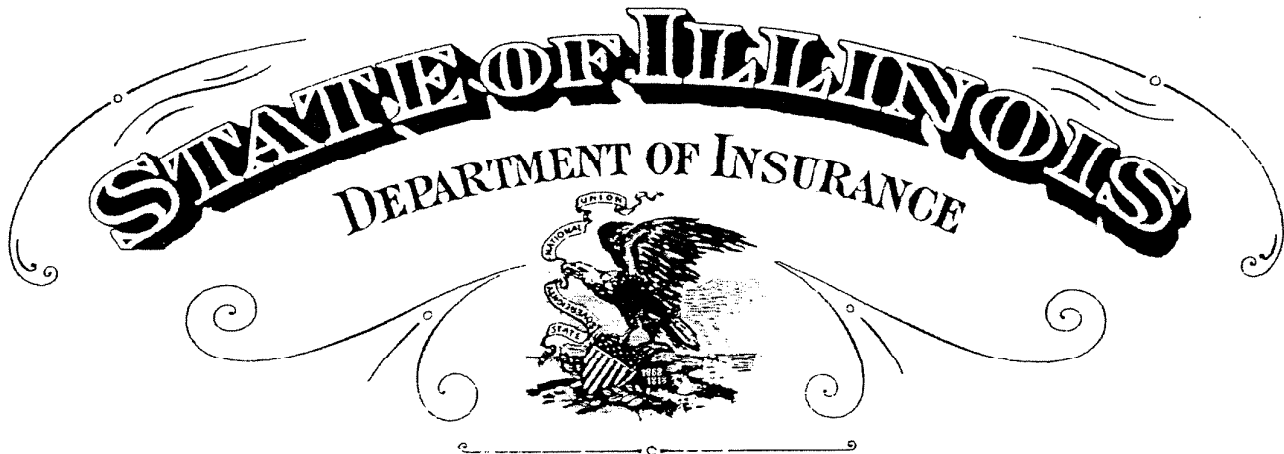
1) The Illinois Insurance Producer's License of the Respondent, David B. Held is hereby revoked as of the date of this Order; and

2) The Respondent, David B. Held, shall pay as costs of this proceeding the sum of \$122.50, within 35 days of the date of this Order, directly to the Illinois Department of Insurance, Tax and Fiscal Services, 320 W. Washington Street, 4th Floor, Springfield, Illinois 62767.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed the Official
Seal of the Department of Insurance in the City
of Springfield, State of Illinois, this 24th day
of June, A.D., 2004.



Deirdre K. Manna
Acting Director



IN THE MATTER OF THE REVOCATION)
OF THE LICENSING AUTHORITY OF:)

DAVID B. HELD)
2584 Paradise Road)
Mattoon, Illinois 61938)

HEARING NO. 4115

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATIONS OF THE HEARING OFFICER**

NOW COMES, Eve Blackwell-Lewis, duly appointed Hearing Officer in the above-captioned matter, and hereby offers her Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

1. On November 6, 2003, Eve M. Blackwell-Lewis, was appointed as Hearing Officer in the above-captioned matter by order of the Director of Insurance, J. Anthony Clark. (Hearing Officer Ex. #1)
2. The Director of Insurance caused a Notice of Hearing to be issued on November 6, 2003, setting the hearing date for December 3, 2003. Attached thereto were both the Appearance of Attorney James Rundblom, on behalf of the Department, a copy of the Order of Revocation, signed by Director J. Anthony Clark, and the request for a hearing, signed by Mr. David Held. (Hearing Officer Ex. #1, with Exhibits A and B)
3. The Notice of Hearing and all of the documents attached thereto, namely Hearing Officer Exhibit 1, was received by the Respondent, as indicated by the return of the U.S. Postal Service's (green) Receipt Cards for Certified Mail. (Hearing Officer Ex. #2)

4. On or about November 25, 2003, the Hearing Officer received a letter from Mr. Held stating that he received the Notice of Hearing and that he was requesting a continuance. (Hearing Officer Ex. 3)
5. Counsel for the Department immediately prepared and delivered a Response to Respondent's Request for Continuance, on or about November 25, 2003. (Hearing Officer Ex. 4)
6. In response, the Hearing Officer issued an Order of Continuance, granting a short continuance. (Hearing Officer Ex. 5)
7. Upon opening the hearing, the Hearing Officer, Mrs. Blackwell-Lewis, entered all of the above noted Hearing Officer Exhibits into the record.
8. The details of the proceedings are as follows:

The following individuals were present at the December 19, 2003 hearing:

Hearing Officer, Eve Blackwell-Lewis
Mr. James Rundblom, Counsel for the Department
Mr. Tom Anderson, Illinois Department of Insurance
Mr. Michael Teer, Illinois Department of Insurance
Mr. John O'Brien, Illinois Department of Insurance
Mr. David Held, Respondent.

The hearing proceeded at approximately 9:30 a.m. on December 19, 2003, as indicated in the Order of Continuance. Appearances were entered in the record, and Hearing Officer exhibits were introduced. (Tr. 4-6) As the Respondent appeared pro se, a brief explanation of the proceedings was given. (Tr. 6-7)

Attorney Rundblom gave his opening statement, wherein he cited violations of various sections of the Illinois Insurance Code, including Sections 500-70(a)(2) and (8), as well as Section 407.2. Attorney Rundblom concluded that the Order of Revocation was appropriate and should be sustained.

Mr. Held then gave his opening statement. Mr. Held stated that he did not come to the hearing "to dispute any of the facts as far as operating without a license . . . " However, he wanted to explain the circumstances surrounding the events that led to his inability to pay the penalty. Mr. Held would like to save his license. This concluded Mr. Held's opening statement.

At this time, Mr. Rundblom called his first witness, Michael Teer. After being duly sworn, Mr. Teer testified as follows:

*Mr. Teer is employed by the Illinois Department of Insurance as the Chief Examiner of the Consumer Division's Producer Regulatory Unit.

*As part of Mr. Teer's duties, he negotiates Stipulation and Consent provisions.

*Mr. Teer became familiar with Mr. Held's file through the work of his staff member, Tom Anderson. Mr. Anderson recommended a Stipulation and Consent Order, which Mr. Teer approved and routed to upper management. The Order was ultimately mailed to Mr. Held.

*Mr. Teer identified Department Ex. A, as a true and accurate copy of the Stipulation and Consent Order, which was negotiated and executed within the normal course of the Department's business.

*During the negotiation of the Stipulation and Consent process, Mr. McGrath represented Mr. Held.

*Included within the Stipulation and Consent Order was a civil forfeiture in the amount of \$4,000 to be paid to the Director of Insurance within 60 days of the entry of the Order.

*Mr. Held and his attorney agreed to the Order, and illustrated such by returning the proposed Order, signed and notarized on or about May 27, 2003.

*Mr. Teer also identified Department Exhibit B, which was a letter dated June 4, 2003 on Department letterhead addressed to the law offices of Bob Dunst, Attention: William D. McGrath. The letter was signed by Mr. Michael Teer. This letter was sent along with the Stipulation and Consent Order requiring payment by July 31, 2003. (Tr. 17)

*Mr. Teer stated that the Department did receive a response letter from Mr. Held's attorney, clarifying the date the payment was due. This letter was introduced as Department Ex. C and properly identified by Mr. Teer. (Tr. 18)

*The Department noted the file with regard to the August 1, 2003 due date. When the penalty was not received, the Department contacted Attorney McGrath regarding the unpaid civil forfeiture. In response, the Respondent requested an extension of time to complete payment. The Department granted Mr. Held an additional 30 days, moving the due date to approximately September 1, 2003.

*Department Exhibit D, which was a letter dated August 7, 2003, addressed to Mr. David B. Held, with a signature line for Michael Teer, and was identified by Mr. Teer as the letter he sent to Mr. Held granting the oral agreement for an extension of time for payment of the civil forfeiture. (Tr. 20-21)

*The Department did not receive the payment after the 30-day extension. Upon contact with the Respondent or his attorney, the Department was informed that the payment would not be forthcoming. Shortly thereafter, an Order of revocation was issued.

This concluded Mr. Teer's direct examination. Mr. Held asked Mr. Teer one question, to which Mr. Teer responded as follows:

*Mr. McGrath did not ask whether a partial payment would help the situation. (Tr. 22)

As Attorney Rundblom did not have any redirect examination, Mr. Teer was excused. Mr. Rundblom then called his second witness, Mr. John O'Brien. After being duly sworn, Mr. O'Brien testified as follows:

*Mr. John O'Brien is the Assistant Deputy Director of the Tax and Fiscal Section of the Illinois Department of Insurance. This section is responsible for all the revenue collections, as well as expenditures of the Department.

*Mr. O'Brien was aware of the \$4,000 civil forfeiture that was due from Mr. Held and had not been paid. The only records of payments under Mr. Held's name were the cost of 2 NSF checks from 1995 and 1998, respectively.

This concluded Mr. O'Brien's direct examination. Mr. Held did not have any cross-examination questions. This witness was excused. This completed the Department's case in chief.

At this time, Mr. Held was informed that he could present his case. After being sworn by the court reporter, Mr. Held gave his own testimony, as follows:

*Mr. Held did not pay the \$4,000. He did not pay because he was unable to raise the money.

*Mr. Held worked for 10 years in the business. When he did so without a license, he did not invent an insurance company. He did not harm anyone. He believes that he helped a lot of people.

*Mr. Held does not dispute the facts.

*Mr. Held requested "a way to either work out something, reduce the fine somehow so I don't have to lose my livelihood."

This concluded Mr. Held's testimony. Mr. Rundblom elicited the following testimony on cross-examination:

*Mr. Held did enter into the Stipulation and Consent Order. Mr. Held also agreed to an extension of time, stating that he would make the payment.

*Mr. Held did not negotiate the \$4,000 fee, his attorney did. His attorney was aware that Mr. Held had been unemployed for 3 months at that time and did not have \$4,000.

*Mr. Held approached his attorney and told him that he only had a portion of the money, and asked if he could send it in. He stated that his attorney advised him that there was no guarantee that the Department would accept a partial payment, as he was on an extension.

*Mr. Held called the Department and spoke with a member of the producer section's staff, declaring that it was crazy for him to lose everything because of one thing. (Tr. 29)

*Mr. Held entered the Stipulation Order because he was scared and thought he was going to have to go to jail.

*Mr. Held said when he asked about a partial payment that he had \$1,500 to submit. However, he did not have the money with him.

This concluded Mr. Held's cross-examination by Attorney Rundblom. Mr. Held made brief remarks, at this time, as follows:

*When Mr. Held called the Department, he was told that his only option was to ask for a hearing.

*Mr. Held does not know what his attorney told the Department during the negotiations about his ability to pay, but he did not have \$4,000 in the bank.

*Mr. Held has family members with cancer. His family is responsible for paying 20% of the cost of the chemotherapy. In addition, Mr. Held has 3 children and has been out of work for 3 months.

*Mr. Held would like to stay in the insurance business. He does not want to lose his license. (Tr. 30-31)

This concluded Mr. Held's remarks. Attorney Rundblom began his closing argument by stating that Mr. Held willingly entered into the Stipulation and Consent Order, which included a civil sanction. He has been unable to meet his obligation to date. Mr. Held does not contest any of the facts. Attorney Rundblom concluded by stating that as a matter of law, the Order of Revocation was appropriate.

Mr. Held then made his closing argument, stating that the laws are in place for a reason. However there are different degrees in that law. He did not invent an insurance company. He just did his day-to-day activities.

The hearing was concluded and the record closed.

CONCLUSIONS OF LAW

Based upon the facts discussed above in the Section entitled "Findings of Fact", the Hearing Officer offers the following Conclusions of Law to the Director of Insurance.

1. Eve Blackwell-Lewis was duly and properly appointed as Hearing Officer in this matter by Order of the Director of Insurance pursuant to Section 402 of the Illinois Insurance Code. (215 ILCS 5/402)
2. The Director has jurisdiction over the subject matter and parties to this proceeding pursuant to various Sections of the Insurance Code. (215 ILCS 5\401, 5\401.1, 5\402, 5\403 and 5\500-5 et. seq.)
3. The purpose of this Hearing was to determine whether Mr. David B. Held should be allowed to maintain an Illinois Insurance Producer License.
4. In the Order of Revocation issued by the Director of Insurance, the Department cited Section 500-70(a)(2)and(8) of the Illinois Insurance Code :

Section 500-70 of the Illinois Insurance Code states, in part, the following:

"The Director may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with this Section or take any combination of actions, for any one or more of the following causes:

...

(2) violating any insurance laws, or violating any rule, subpoena, or order of the Director or of another states insurance commissioner;

...

(8) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.

***215 ILCS 5/500-70(a)(2) and (8)
(emphasis added)***

In addition, the Department also cited 5/500-110 and 500-115 of the Illinois Insurance Code, which states, in part, as follows:

Section 5/407.2 Suspension or revocation; grounds; notice and hearing

Section 407.2(1) When any person or company has a license or certificate of authority under this Code and knowingly fails or refuses to comply with a lawful Order of the Director, entered after notice and hearing, within the period of time specified in the Order, the Director may, in addition to any other penalty or authority provided, refuse to renew or revoke the license or certificate of authority of such person or company, or may suspend the license or certificate of authority of such person or company until compliance with such order has been obtained.

***215 ILCS 5/407.2
(emphasis added)***

The Department has clearly set forth multiple statutory provisions that authorize the action taken by the Director concerning Mr. Held. The Department introduced into evidence a copy of the Stipulation and Consent Order, which Mr. Held entered into, as well as other correspondence following the issuance of the Stipulation and Consent Order. As part of that Order, Mr. Held agreed to pay a \$4,000 civil forfeiture. This non-payment is the basis of the Order of Revocation.

Mr. Held himself openly admitted on numerous occasions during the hearing that he did not pay the \$4,000 civil forfeiture amount. Without going any further, it becomes clear that disciplinary actions is appropriate. Mr. Held himself stated that he did not come to contest the facts, but rather to explain his position and seek an alternative to the loss of his license.

The basis of the Stipulation and Consent was allegations that Mr. Held spent one full year without a license, while conducting insurance business in the state of Illinois. This is a very serious violation of the law. Owning up to his responsibility, Mr. Held entered into a Stipulation and Consent Order, agreeing to pay a sum of money that he apparently did not have to pay.

Mr. Held stated that he requested the hearing, not to contest the facts, but to see what he could do to keep his license, in light of his other obligations. While Mr. Held submitted no documentation, he stated that he had a family, which included 3 children.

In addition, his mother-in-law had cancer. He stated that his family picked up 20% of the cost of chemotherapy. Finally, Mr. Held was unemployed for 3 months prior to entering the Stipulation and Consent Order.

Clearly the statute allows for the revocation of a license for those who "knowingly fails or refuses" to comply with an Order of the Director. In this instance, however, Mr. Held has an inability to pay, not unwillingness. Mr. Held testified that he was willing to pay a partial amount prior to the deadline, but that was not acceptable. Mr. Held should not be revoked merely for the lack of resources.

The statutory sections cited also give the Director of Insurance the option of suspending the license of those that are found in violation of the noted Code provisions. This flexibility allows the Director to consider other factors and chose the discipline that is more appropriate. Mr. Held appeared to ask for consideration of his circumstances.

Thus, the Hearing Officer recommends a decision that will be responsive, to some extent, to both parties. In keeping with the seriousness of the violations noted in the Stipulation and Consent Order, along with the fact that Mr. Held willingly entered into that agreement, the amount of the civil forfeiture should not be changed. In addition, the license of the Mr. Held should be suspend until such time as he makes complete and full payment of the \$4, 000 civil forfeiture.

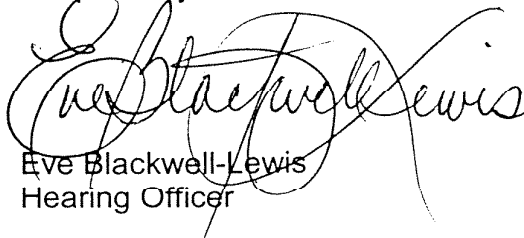
RECOMMENDATIONS

Based upon the above-stated Findings and Conclusions, the Hearing Officer respectfully makes the following recommendations to the Director of Insurance:

1. The Director shall enter an Order of Suspension, until such time as David B. Held has come into full compliance with the Stipulation and Consent Order, including the full and complete payment of the \$4,000 civil forfeiture.
2. The Order shall take effect 5 days after the date of the Director's Order.

Dated: March 31, 2004

Respectfully submitted,



Eve Blackwell-Lewis
Hearing Officer